

No. 12132

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JOHN D. WALKER,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

Appeal from the United States District Court for the
Southern District of California

Central Division

FILED

MAR 18 1949

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

LEO V. SILVERSTEIN

210 West Seventh Street
Los Angeles 14, Calif.

For Appellee:

JAMES M. CARTER

United States Attorney

NORMAN W. NEUKOM

Assistant U. S. Attorney

600 U. S. Post Office and Court House Building
Los Angeles 12, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

In the District Court of the United States in and for the
Southern District of California
Central Division

September, 1948, Term

No. 20366

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN D. WALKER, SAM McMURRAY, CHESTER
JEFFERSON, and EDWARD ROY,

Defendants.

INDICTMENT

[U. S. C., Title 26, Sec. 3224(a)—Sale of Narcotics)
The grand jury charges:

COUNT ONE
[26 U. S. C. 3224(a)]

On or about September 10, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants John D. Walker and Edward Roy did sell to Fred Dauge a certain narcotic drug, namely: approximately one grain of heroin, a derivative of opium, which said heroin was sold by the said defendants without having registered with the Collector of Internal Revenue as dealers in this narcotic, and without paying the special tax imposed on such dealers by law. [2]

COUNT TWO

[26 U. S. C. 3224(a)]

On or about September 12, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Edward Roy did sell to George R. Davis a certain narcotic drug, namely: approximately two grains of heroin, a derivative of opium, which said heroin was sold by the said defendant without having registered with the Collector of Internal Revenue as a dealer in this narcotic, and without paying the special tax imposed on such dealers by law. [3]

COUNT THREE

[26 U. S. C. 3224(a)]

On or about September 13, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Edward Roy did sell to George R. Davis a certain narcotic drug, namely: approximately two grains of heroin, a derivative of opium, which said heroin was sold by the said defendant without having registered with the Collector of Internal Revenue as a dealer in this narcotic, and without paying the special tax imposed on such dealers by law. [4]

COUNT FOUR

[26 U. S. C. 3224(a)]

On or about September 15, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Edward Roy did sell to George R. Davis a certain narcotic drug, namely: approximately one grain of heroin, a derivative of opium, which

said heroin was sold by the said defendant without having registered with the Collector of Internal Revenue as a dealer in this narcotic, and without paying the special tax imposed on such dealers by law. [5]

COUNT FIVE

[26 U. S. C. 3224(a)]

On or about September 16, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants John D. Walker and Chester Jefferson did sell to George R. Davis a certain narcotic drug, namely: approximately two grains of heroin, a derivative of opium, which said heroin was sold by the said defendants without having registered with the Collector of Internal Revenue as dealers in this narcotic, and without paying the special tax imposed on such dealers by law. [6]

COUNT SIX

[26 U. S. C. 3224(a)]

On or about September 17, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants John D. Walker and Edward Roy did sell to George R. Davis and Fred Dauge a certain narcotic drug, namely: approximately two grains of heroin, a derivative of opium, which said heroin was sold by the said defendants without having registered with the Collector of Internal Revenue as dealers in this narcotic and without paying the special tax imposed on such dealers by law. [7]

COUNT SEVEN
[26 U. S. C. 3224(a)]

On or about September 20, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants John D. Walker and Edward Roy did sell to George R. Davis and Fred Dauge a certain narcotic drug, namely: approximately one grain of heroin, a derivative of opium, which said heroin was sold by the said defendants without having registered with the Collector of Internal Revenue as dealers in this narcotic and without paying the special tax imposed on such dealers by law. [8]

COUNT EIGHT
[26 U. S. C. 3224(a)]

On or about September 22, 1948, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants John D. Walker and Sam McMurray did sell to George R. Davis a certain narcotic drug, namely: approximately one grain of heroin, a derivative of opium, which said heroin was sold by the said defendants without having registered with the Collector of Internal Revenue as dealers in this narcotic, and without paying the special tax imposed on such dealers by law.

A True Bill.

A. L. ALDSWEDE
Foreman

JAMES M. CARTER

United States Attorney

[Endorsed]: Filed Oct. 27, 1948. Edmund L. Smith,
Clerk. [9]

[Minutes: Monday, November 1, 1948]

Present: The Honorable Peirson M. Hall, District Judge.

For arraignment and plea; E. J. Zack, Ass't U. S. Att'y, appearing as counsel for Gov't; Paul Tapley, Esq., appearing as counsel for all defendants except Def't Walker; Leo V. Silverstein, Esq., appearing as counsel for Def't Walker, who is on bond in another case, and on O/R in this case; the other defendants being present in custody;

Defendants state their true names are as set forth in Indictment, are informed they are entitled to jury trial and counsel, waive reading of Indictment and each defendant enters separate plea of not guilty to each count.

Court orders cause set for trial Nov. 23, 1948, 10 A. M. [10]

[Title of District Court and Cause]

VERDICT

We, the jury in the above-entitled case, find the defendant, John D. Walker, Guilty as charged in count five of the Indictment; Guilty as charged in count six of the Indictment; Guilty as charged in count seven of the Indictment; and, Guilty as charged in count eight of the Indictment.

We, the Jury in the above-entitled case, find the defendant, Sam McMurray, Guilty as charged in count eight of the Indictment.

We, the Jury in the above-entitled case, find the defendant, Chester Jefferson, Guilty as charged in count five of the Indictment.

We, the Jury in the above-entitled case, find the defendant, Edward Roy, Guilty as charged in count two of the Indictment; Guilty as charged in count three of the Indictment; Guilty as charged in count four of the Indictment; Guilty as charged in count six of the Indictment; and, Guilty as charged in count seven of the Indictment.

Dated: Los Angeles, California, November 24, 1948.

GERTRUDE AGNES ANDERSEN
Foreman of the Jury

[Endorsed]: Filed Nov. 24, 1948. Edmund L. Smith,
Clerk. [11]

District Court of the United States for the
Southern District of California
Central Division

No. 20366—Criminal

UNITED STATES OF AMERICA

v.

JOHN D. WALKER

JUDGMENT AND COMMITMENT

On this 13th day of December, 1948, came the attorney for the government and the defendant appeared in person and by counsel, Leo V. Silverstein, Esq.,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of the sale of narcotics in violation of Section

3224(a), Title 26, U. S. Code, as charged in each of counts five, six, seven and eight of the Indict. and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years in an institution of the penitentiary type on count five of the Indictment; and, on each of counts six, seven and eight the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one year, said sentences to begin and run concurrently with each other and not consecutively to one another, and to begin and run concurrently with the last year of the five-year term of imprisonment imposed on count five herein.

It Is Adjudged that on the Court's own motion the bond of the defendant is exonerated and the defendant forthwith remanded to the custody of the U. S. Marshal.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

PEIRSON M. HALL

United States District Judge

[Endorsed]: Filed Dec. 13, 1948. Edmund L. Smith,
Clerk. [12]

[Title of District Court and Cause]

NOTICE OF APPEAL

Name and Address of Appellant: John D. Walker,
226 West 40th Place, Los Angeles, California.

Name and Address of Appellant's Attorney: Leo V.
Silverstein, 210 West Seventh Street, Los Angeles 14,
California.

Offense: Violation of 26 U. S. C., Sec. 3224(a).

Concise statement of judgment or order giving date of
any sentence:

Defendant having been found guilty on Counts Five,
Six, Seven and Eight of the Indictment, the Court, on
December 13, 1948, pronounced judgment as follows: "It
is the judgment and sentence of the Court that the de-
fendant John D. Walker on Count Five of the Indict-
ment, be committed to the custody of the Attorney General
for [13] a period of five years. It is the judgment and
sentence of the Court that the defendant John D. Walker
be committed to the custody of the Attorney General for
a period of one year each on Counts Six, Seven and Eight,
to be concurrent and not consecutive with one another
and to be concurrent and not consecutive to the last year
of the five years on Count Five."

Name of prison where confined if not on bail: County
Jail, Los Angeles, California.

I, John D. Walker, hereby appeal to the United States
Circuit Court of Appeals for the Ninth Circuit from the
above judgment.

Dated: December 14, 1948.

JOHN D. WALKER
Appellant

LEO V. SILVERSTEIN

Attorney for Appellant

[Endorsed]: Filed & mld. copy to U. S. Atty., Dec.
14, 1948. Edmund L. Smith, Clerk. [14]

[Title of District Court and Cause]

STIPULATION AND ORDER EXTENDING TIME
FOR FILING AND DOCKETING

It Is Hereby Stipulated by and between the parties hereto through their respective counsel that defendant and appellant John D. Walker, may have to and including March 1, 1949, within which to file and docket the record on appeal in the above entitled matter, subject to order of the Court.

Dated: December 13, 1948.

JAMES M. CARTER

United States Attorney

By Norman W. Neukom

Deputy

Attorneys for Plaintiff

LEO V. SILVERSTEIN

Attorney for Defendant and Appellant

John D. Walker

12/15/48. So ordered.

PEIRSON M. HALL

Judge

[Endorsed]: Filed Dec. 15, 1948. Edmund L. Smith,
Clerk. [15]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 20, inclusive, contain the original Indictment; Verdict; Judgment and Commitment; Notice of Appeal; Stipulation and Order Extending Time for Filing and Docketing; Statement of Points Appellant Intends to Rely Upon on Appeal and Designation of Contents of Record on Appeal and a full, true and correct copy of Minute Order Entered November 1, 1948, which constitute the record on the appeal of John D. Walker to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21st day of February, A. D. 1949.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke
Chief Deputy

[Endorsed]: No. 12132. United States Court of Appeals for the Ninth Circuit. John D. Walker, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal From the United States District Court for the Southern District of California, Central Division.

Filed February 23, 1949.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

At a Stated Term, to wit: The October Term 1948, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday the 31st day of December in the year of our Lord one thousand nine hundred and forty-eight.

Present:

Honorable William Denman, Chief Judge, Presiding,
Honorable Homer T. Bone, Circuit Judge,
Honorable William E. Orr, Circuit Judge.

No. 12132

JOHN D. WALKER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER GRANTING MOTION FOR ADMISSION
TO BAIL PENDING APPEAL, AND FIXING
BAIL

Upon consideration of the motion of appellant for admission to bail pending appeal, heretofore submitted to this Court, and it appearing therefrom and from the oral arguments of counsel had thereon, that the appellee concedes that Walker's appeal presents a contention reasonably warranting our consideration and makes no opposition to the motion for release of appellant on bail pending appeal,

It Is Ordered that said motion be, and hereby is granted, and that appellant be, and he hereby is admitted to bail upon the posting of a bail bond, conditioned as required by law, in the amount of \$10,000.00, the bond to be approved by the United States Attorney and the District Court for the Southern District of California, and filed with the clerk of said District Court.

In the United States Court of Appeals
for the Ninth Circuit

No. 12132

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

v.

JOHN D. WALKER,

Defendant and Appellant.

STATEMENT OF POINTS INTENDED TO BE
RELIED UPON ON APPEAL AND DESIGNA-
TION OF RECORD NECESSARY TO CON-
SIDER SAME

The appellant intends to rely upon the following point
on appeal:

The indictment, and in particular Counts Five, Six,
Seven and Eight thereof, fails to state an offense against
the laws of the United States.

The appellant hereby designates the following record
necessary to consider the appeal:

* * * * *

Dated: February 21, 1949.

LEO V. SILVERSTEIN
Attorney for Defendant and Appellant.

Received copy of the within Statement of Points this
21st day of February, 1949. James M. Carter, U. S. At-
torney, by Veloris Bonhus.

[Endorsed]: Filed Feb. 23, 1949. Paul P. O'Brien,
Clerk.

